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**UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

**EUGENIO GOROSPE, an Individual on behalf of
himself and all others similarly situated,**

Plaintiff,

vs.

PORTFOLIO RECOVERY ASSOCIATES, LLC,

Defendant.

Case No.:

CLASS ACTION

COMPLAINT

AND

JURY TRIAL DEMAND

Plaintiff, Eugenio Gorospe, on behalf of himself (hereinafter “Plaintiff”), and all others similarly situated, by and through his undersigned attorney, alleges against the Defendant Portfolio Recovery Associates, LLC (hereinafter “Defendant”) as follows:

PRELIMINARY STATEMENT

1. This is an action for damages arising from Defendant’s violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, (hereinafter “FDCPA” or “the Act”), and the Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788, *et seq.* (hereinafter “the Rosenthal Act”), both of which prohibit debt collectors from engaging in abusive, deceptive and unfair debt collection practices. Such collection practices include, *inter alia*, Defendant’s deceptive, misleading and unfair conduct in a written collection letter to the Plaintiff on a time-

1 barred debt in violation of 15 U.S.C. § 1692e(2)(A), 15 U.S.C. § 1692e(10), 15 U.S.C. 1692f and
2 California Civil Code § 1788.17.

3 2. The FDCPA regulates the behavior of collection agencies attempting to collect a
4 debt on behalf of another. The United States Congress found that the Act was necessary
5 because existing consumer protection laws were inadequate as demonstrated by abundant
6 evidence of abusive, deceptive and unfair debt collection practices by many debt collectors
7 which contributed to personal bankruptcies, marital instability, loss of jobs and invasions of
8 individual privacy. Congress enacted the FDCPA to eliminate abusive debt collection practices
9 by debt collectors, to ensure that those debt collectors who refrain from using abusive debt
10 collection practices are not competitively disadvantaged, and to promote uniform State action to
11 protect consumers against debt collection abuses.
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14 3. The FDCPA is a strict liability statute, which provides for actual and/or statutory
15 damages upon the showing of one violation. The FDCPA is construed broadly so as to
16 effectuate its remedial purposes and a debt collector's conduct is judged from the standpoint of
17 the "least sophisticated consumer."
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19 4. To prohibit deceptive practices, the FDCPA at 15 U.S.C. § 1692e, outlaws the
20 use of false, deceptive and/or misleading representations in connection with the collection of
21 any debt and sets forth a non-exhaustive list of certain *per se* violations of false and deceptive
22 collection conduct. 15 U.S.C. § 1692e(1)-(16). Among these *per se* violations prohibited by that
23 section are: false representations as to the character, amount, or legal status of any debt, 15
24 U.S.C. § 1692e(2)(A); and the use of any false representation or deceptive means to collect any
25 debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10). The FDCPA
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1 further prohibits debt collectors from using unfair or unconscionable means to collect or attempt
2 to collect a debt. 15 U.S.C. § 1692f.

3 5. The Legislature of the State of California made the followings findings with
4 respect to enactment of the Rosenthal Act:

5 (1) The banking and credit system and grantors of credit to consumers are
6 dependent upon the collection of just and owing debts. Unfair or deceptive
7 collection practices undermine the public confidence which is essential to the
8 continued functioning of the banking and credit system and sound extensions of
9 credit to consumers.

10 (2) There is a need to ensure that debt collectors and debtors exercise their
11 responsibilities to one another with fairness, honestly and due regard for the rights of
12 the other. It is the purpose of this title to prohibit debt collectors from engaging in
13 unfair or deceptive acts or practices in the collection of consumer debts and to
14 require debtors to act fairly in entering into and honoring such debts.

15 California Civil Code §1788.1

16 6. The Rosenthal Act likewise mandates “[e]very debt collector collecting or
17 attempting to collect a consumer debt [to] comply with provision of Sections 1692b to 1692j,
18 inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United
19 States Code” and, as such, the failure to do so is a separate and distinct violation of the
20 Rosenthal Act. California Civil Code §§ 1788.17, 1788.32.

21 7. The Rosenthal Act is a strict liability statute, which provides for actual and/or
22 statutory damages upon the showing of one violation. The Rosenthal Act is construed broadly
23 so as to effectuate its remedial purposes and a debt collector’s conduct is judged from the
24 standpoint of the “least sophisticated consumer.”

25 8. The Plaintiff, individually and behalf of all others similarly situated, seeks actual
26 damages, statutory damages, attorneys’ fees and costs and all other relief, legal or equitable in
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1 nature, as deemed appropriate by the Court, pursuant to the FDCPA, the Rosenthal Act and all
2 other common or statutory law.

3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and
5 15 U.S.C. §1692k(d).

6 10. Venue is proper in this district under 28 U.S.C § 1391(b).

7 **PARTIES**

8 11. Plaintiff is a natural person, who at all relevant times has resided in the city of San
9 Jose, in the County of Santa Clara, State of California. Plaintiff is a “consumer” as defined by
10 15 U.S.C. § 1692a(3) and a “debtor” as defined by California Civil Code § 1788.2(h).

11 12. Defendant is Limited Liability Company, with its principal executive offices
12 located at 120 Corporate Boulevard, Norfolk, Virginia, 23501, doing business in the State of
13 California. Defendant is a “debt collector” as defined by 15 U.S.C § 1692a(6) and California
14 Civil Code § 1788.2(c).

15 **CLASS ACTION ALLEGATIONS**

16 13. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
17 Procedure Rule 23, on behalf of himself and all persons/consumers, along with their successors-
18 in-interest, who reside in the State of California and have received within one (1) year from the
19 date of Plaintiff’s Complaint similar debt collection notices/letters/communications from
20 Defendant which, as alleged herein, are in violation of the FDCPA, 15 U.S.C. § 1692, *et seq.*,
21 and the Rosenthal Act, California Civil Code, §§ 1788, *et seq.* Excluded from the Class is
22 Defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated
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1 with the Defendant, including, without limitation, persons who are officers, directors, employees,
2 associates or partners of Defendant, as impracticable.

3 14. On information and belief, thousands of persons have received debt collection
4 notices/letters/communications from Defendant which violate the FDCPA, 15 U.S.C. § 1692, *et*
5 *seq.*, and the Rosenthal Act, California Civil Code, §§ 1788, *et seq.*

6
7 15. This Class satisfies all the requirements of Fed. R. Civ. P. Rule 23 for maintaining
8 a class action.

9 16. The Class is so numerous that joinder of all members is impracticable. On
10 information and belief, thousands of persons have received debt collection
11 notices/letters/communications from Defendant which violate the FDCPA, 15 U.S.C. § 1692, *et*
12 *seq.*, and the Rosenthal Act, California Civil Code §§ 1788, *et seq.*

13
14 17. The debt collection notices/letters/communications received by the Class from the
15 Defendant are to be evaluated by the objective standard of the hypothetical “least sophisticated
16 consumer.”

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18 18. There are questions of law and fact which are common to the Class and which
19 predominate over questions affecting any individual Class member. These common questions of
20 law and fact include, without limitation: (i) Whether Defendant violated the FDCPA § 1692, *et*
21 *seq.*; (ii) Whether the Defendant violated the Rosenthal Act, California Civil Code §§ 1788, *et*
22 *seq.*; (iii) Whether Plaintiff and the Class have been injured by Defendant’s conduct; (iv)
23 Whether Plaintiff and the Class have sustained damages and are entitled to restitution as a result
24 of Defendant’s wrongdoing and, if so, what is the proper measure and appropriate statutory
25 formula to be applied in determining such damages and restitution; and (v) Whether Plaintiff and
26 the Class are entitled to declaratory and/or injunctive relief.
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1 19. Plaintiff's claims are typical of the claims of the Class, and Plaintiff has no
2 interests adverse or antagonistic to the interests of other members of the Class.

3 20. A class action is superior to other methods for the fair and efficient adjudication
4 of the claims herein asserted, this being specifically envisioned by Congress as a principal means
5 of enforcing the FDCPA, as codified by 15 U.S.C. § 1692k.
6

7 21. The members of the Class have claims which are unlikely to be vindicated in the
8 absence of a class action.

9 22. Prosecution of separate actions by individual members of the Class would create
10 the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or
11 varying standards for the parties.
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13 23. A class action will permit a large number of similarly situated persons to
14 prosecute their common claims in a single forum simultaneously, efficiently, and without the
15 duplication of effort and expense that numerous individual actions would engender. Class
16 treatment also will permit the adjudication of relatively small claims by many Class members
17 who could not otherwise afford to seek legal redress for the wrongs complained of herein.
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19 24. Plaintiff will fairly and adequately represent the Class Members' interests, in that
20 the Plaintiff's counsel is qualified and experienced and, further, anticipates no impediments in
21 the pursuit and maintenance of the class action as sought herein.
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23 25. Absent a class action, the Class members will continue to suffer losses borne from
24 Defendant's breaches of their statutorily protected rights as well as monetary damages, thus
25 allowing and enabling: (a) Defendant's wrongful conduct to proceed and; (b) Defendant to
26 further enjoy the benefit of its ill-gotten gains.
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32. The Collection Letter was seeking to collect the alleged debt from the Plaintiff by offering a "Pay the Full Balance" plan or "A Settlement Payment Plan." The Collection Letter opens with the following statement to the Defendant:

Dear EUGENIO O GOROSPE

For nearly 20 years, Portfolio Recovery Associates, LLC ("PRA, LLC") has helped customers across the country resolve their debt. Please contact us directly to find out how we can help you. We are committed to working with you to design a plan that fits your budget. Call us today!

See Exhibit A.

33. The Defendant than (in bold enlarged print that takes up the vast majority of the letter space) presents Plaintiff with its "Pay the Full Balance" plan or "A Settlement Payment Plan" options as follows:

Pay the Full Balance	Choose A Settlement Payment Plan
<ul style="list-style-type: none"> 1 Payment of \$821.81 	<ul style="list-style-type: none"> 1 payment of \$488.00 SAVE \$155.81
OR	OR
<ul style="list-style-type: none"> 6 Monthly Payments of \$103.63 	<ul style="list-style-type: none"> Pay \$83.00 for 6 consecutive months SAVE \$123.81
OR	OR
<ul style="list-style-type: none"> 12 Monthly Payments of \$51.81 	<ul style="list-style-type: none"> Pay \$44.00 for 12 consecutive months SAVE \$93.81
<p>*Your account will be considered "Paid in Full" once your account reaches a zero balance.</p>	<p>*Your account will be considered "Settled in Full" after your final payment is posted. You owe nothing more.</p>

Your first payment must be received NO LATER than 05/15/2016.
Call now to get started or to learn about other payment options!

We are ready to help you resolve this debt!
Just call:
1-800-772-1413
before 05/15/2016
to discuss the
AFFORDABLE PAYMENT OPTIONS
that are available to you.
8 AM to 11 PM Mon.-Fri.
8 AM to 5 PM Sat. • 2 PM to 9 PM Sun.

Mall all checks and payments to:
PORTFOLIO RECOVERY ASSOCIATES, LLC
P.O. Box 12914
Norfolk VA 23541

Pay Online Using Your Checking Account!
www.portfoliorecovery.com

*We are not obligated to renew this offer.

Company Address: Portfolio Recovery Associates, LLC, 120 Corporate Blvd., Norfolk, VA 23502

Disputes Correspondence Address: Portfolio Recovery Associates, LLC Disputes Department, 140 Corporate Blvd., Norfolk, VA 23502 or E-mail: PRA_Disputes@portfoliorecovery.com

The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, Portfolio Recovery Associates, LLC may continue to report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.

1 34. In the last line of the Collection Letter in very fine print, after offering Plaintiff
2 the “Pay the Full Balance” or “Settlement Payment Plan” options for the alleged debt, Defendant
3 states: “The law limits how long you can be sued on a debt. Because of the age of your debt, we
4 will not sue you for it. If you do not pay the debt, Portfolio Recovery Associates, LLC may
5 continue to report it to the credit reporting agencies as unpaid for as long as the law permits this
6 reporting.” *See* Exhibit A.

7
8 35. The Collection Letter fails, however, to advise the Plaintiff that if the Plaintiff
9 accepts either the “Pay the Full Balance” plan or the “Settlement Payment Plan”, both of which
10 provided for a series of partial payments, the Plaintiff by making even a single partial payment
11 revives the Defendant’s ability statute of limitations) to sue the Plaintiff to collect the full
12 balance of the debt. As such, the Collection Letter if accepted by the Plaintiff would in fact
13 render the Plaintiff worse off than if it was rejected.

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15 36. The Collection Letter is misleading, confusing, deceptive and unfair as it
16 misrepresents the nature, character and/or legal status of the alleged debt. The last line of the
17 Collection Letter wherein Defendant represents to the Plaintiff that due to the age of the alleged
18 debt the Defendant would not sue the Plaintiff on the alleged debt, leads the Plaintiff to believe
19 that the Plaintiff could accept either of the “Pay the Full Balance” plan or the “Settlement
20 Payment Plan” and make the partial payments thereunder risk free of any future litigation if the
21 Plaintiff was unable to continue making the future partial payments. Of course, this is not the
22 case. If Plaintiff made even one partial payment of a single dollar on the alleged debt, the statute
23 of limitations on the alleged debt would be revived and the Defendant would have another four
24 (4) years from the date of the partial payment (the applicable statute of limitations under
25 California law) to sue Plaintiff for the entire amount of the alleged debt.
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37. It is the position of the Federal Trade Commission, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Reserve Board and the Office of the Comptroller of the Currency that when “collecting on a time barred debt a debt collector [Defendant] must inform the consumer [Plaintiff] that (1) the collector cannot sue to collect the debt *and (2) providing a partial payment would revive the collector’s [Defendant’s] ability to sue to collect the balance.*” *McMahon v. LVNV Funding, LLC*, 774 F.3d 1010, 1015 (7th Cir. 2014) (emphasis added).

38. The Defendant offers to Plaintiff in the Collection Letter a “Settlement Payment Plan.” The use of the word “settlement” is misleading, confusing, deceptive and unfair in that it leads the Plaintiff to believe that the debt was a legally enforceable obligation and that if the Plaintiff did not accept the “settlement”, the Plaintiff would face a legal proceeding where the full amount of the debt would be demanded.

39. The Defendant engaged in misleading, deceptive, and unfair debt collection practices in violation of the FDCPA and the Rosenthal Act by its Collection Letter to the Plaintiff.

COUNT I

VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT, 15 U.S.C. 1692e(2)(A) and 15 U.S.C. § 1692e(10)

40. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 39 of the Complaint and incorporates them by reference with the same force and effect as if set forth at length specifically herein.

41. In an effort to collect a consumer debt, Defendant caused the Collection Letter dated April 16, 2015 to be sent to Plaintiff.

42. The Collection Letter was received by Plaintiff on or about April 23, 2015.

43. The Collection Letter was seeking to collect the alleged debt from the Plaintiff by offering a "Pay the Full Balance" plan or "A Settlement Payment Plan."

44. The Defendant (in bold enlarged print that takes up the vast majority of the letter space) presented Plaintiff with its "Pay the Full Balance" plan or "A Settlement Payment Plan" options as follows:

Pay the Full Balance	Choose A Settlement Payment Plan
• 1 Payment of \$321.81	• 1 payment of \$488.00 SAVE \$166.81
OR	OR
• 6 Monthly Payments of \$103.63	• Pay \$83.00 for 6 consecutive months SAVE \$123.81
OR	OR
• 12 Monthly Payments of \$51.81	• Pay \$44.00 for 12 consecutive months SAVE \$93.81
*Your account will be considered "Paid in Full" once your account reaches a zero balance.	*Your account will be considered "Settled in Full" after your final payment is posted. You owe nothing more.

Your first payment must be received NO LATER than 05/15/2015.
Call now to get started or to learn about other payment options!

We are ready to help you resolve this debt!
Just call:
1-800-772-1413
before 05/15/2015
to discuss the
AFFORDABLE PAYMENT OPTIONS
that are available to you.
8 AM to 11 PM Mon.-Fri.
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Mall all checks and payments to:
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Disputes Correspondence Address: Portfolio Recovery Associates, LLC Disputes Department, 140 Corporate Blvd., Norfolk, VA 23502 or E-mail: PRA_Disputes@portfoliorecovery.com

The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, Portfolio Recovery Associates, LLC may continue to report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.

45. After offering Plaintiff the "Pay the Full Balance" plan or "A Settlement Payment Plan" options for the alleged debt, the Defendant's Collection Letter contains the following statement in very fine print: "The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, Portfolio Recovery Associates, LLC may continue to report it to the credit reporting agencies as unpaid for as long as the law permits this reporting." See Exhibit A.

1 46. The Collection Letter fails, however, to advise the Plaintiff that if the Plaintiff
2 accepts either the “Pay the Full Balance” plan” or the “Settlement Payment Plan”, both of which
3 provided for a series of partial payments, the Plaintiff by making even a single partial payment
4 revives the Defendant’s ability (statute of limitations) to sue the Plaintiff to collect the full
5 balance of the debt. As such, the Collection Letter if accepted by the Plaintiff would in fact
6 render the Plaintiff worse off than if it was rejected.
7

8 47. The Collection Letter is misleading, confusing, deceptive and unfair as it
9 misrepresents the nature, character and/or legal status of the alleged debt. The last line of the
10 Collection Letter, wherein Defendant represents to the Plaintiff that due to the age of the alleged
11 debt the Defendant would not sue the Plaintiff on the alleged debt, leads the Plaintiff to believe
12 that the Plaintiff could accept either the “Pay the Full Balance” plan or the “Settlement Payment
13 Plan” and make the partial payments thereunder risk free of any future litigation if the Plaintiff
14 was unable to continue making the future partial payments. Of course, this is not the case. If
15 Plaintiff made even one partial payment of a single dollar, the statute of limitations on the
16 alleged debt would be revived and the Defendant would have another four (4) years from the
17 date of the partial payment (the applicable statute of limitations under California law) to sue
18 Plaintiff for the entire amount of the alleged debt.
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21 48. It is the position of the Federal Trade Commission, the Consumer Financial
22 Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Reserve Board and
23 the Office of the Comptroller of the Currency that when “collecting on a time barred debt a debt
24 collector [Defendant] must inform the consumer [Plaintiff] that (1) the collector cannot sue to
25 collect the debt *and (2) providing a partial payment would revive the collector’s [Defendant’s]*
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1 *ability to sue to collect the balance.” McMahon v. LVNV Funding, LLC*, 774 F.3d 1010, 1015
2 (7th Cir. 2014) (emphasis added).

3 49. By virtue of Defendant’s Collection Letter, Defendant falsely represented the
4 nature and/or status of the Alleged Debt.

5 50. Defendant’s actions violate the FDCPA, 15 U.S.C. §1692e(2)(A), which prohibits
6 “[t]he false representation of (A) the character, amount or legal status of any debt.”
7

8 51. By virtue of Defendant’s Collection Letter, Defendant engaged in deceptive
9 means to attempt to collect the alleged debt from the Plaintiff.

10 52. Defendant’s actions violate the FDCPA, 15 U.S.C. §1692e(10), which prohibits
11 “[t]he use of any false representation or deceptive means to collect or attempt to collect any debt
12 or to obtain information concerning a consumer.”
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14 53. Defendant’s actions were knowing and willful.

15 54. As a result of Defendant’s wrongful collection practices, Plaintiff has been
16 damaged and is entitled to relief.
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19 **COUNT II**

20 **VIOLATIONS OF THE FAIR DEBT COLLECTIONS PRACTICES ACT,**
21 **15 U.S.C. § 1692f**

22 55. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through
23 54 of the Complaint and incorporates them by reference with the same force and effect as if set
24 forth at length specifically herein.
25

26 56. In an effort to collect a consumer debt, Defendant caused the Collection Letter
27 dated April 16, 2015 to be sent to Plaintiff.

28 57. The Collection Letter was received by Plaintiff on or about April 23, 2015.

58. The Collection Letter was seeking to collect the alleged debt from the Plaintiff by offering a “Pay the Full Balance” plan or “A Settlement Payment Plan.”

59. The Defendant (in bold enlarged print that takes up the vast majority of the letter space) presents Plaintiff with its “Pay the Full Balance” plan or “A Settlement Payment Plan” options as follows:

Pay the Full Balance	Choose A Settlement Payment Plan
<ul style="list-style-type: none"> • 1 Payment of \$821.81 	<ul style="list-style-type: none"> • 1 payment of \$488.00 SAVE \$165.81
OR	OR
<ul style="list-style-type: none"> • 6 Monthly Payments of \$103.63 	<ul style="list-style-type: none"> • Pay \$83.00 for 6 consecutive months SAVE \$123.81
OR	OR
<ul style="list-style-type: none"> • 12 Monthly Payments of \$51.81 	<ul style="list-style-type: none"> • Pay \$44.00 for 12 consecutive months SAVE \$93.81
<p>*Your account will be considered "Paid in Full" once your account reaches a zero balance.</p>	<p>*Your account will be considered "Settled in Full" after your final payment is posted. You owe nothing more.</p>

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We are ready to help you resolve this debt!
Just call:
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before 05/15/2015
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AFFORDABLE PAYMENT OPTIONS
that are available to you.
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The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, Portfolio Recovery Associates, LLC may continue to report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.

60. The Defendant offers to Plaintiff in the Collection Letter a “Settlement Payment Plan.” The use of the word “settlement” is misleading, confusing, deceptive and unfair in that it leads the Plaintiff to believe that the debt was a legally enforceable obligation and that if the Plaintiff did not accept the “settlement”, the Plaintiff would face a legal proceeding where the full amount of the debt would be demanded.

69. The Defendant presents Plaintiff (in bold enlarged print that takes up the vast majority of the letter space) with its “Pay the Full Balance” plan or “A Settlement Payment Plan” options as follows:

Pay the Full Balance	Choose A Settlement Payment Plan
<ul style="list-style-type: none"> 1 Payment of \$921.81 	<ul style="list-style-type: none"> 1 payment of \$486.00 SAVE \$155.81
OR	OR
<ul style="list-style-type: none"> 6 Monthly Payments of \$103.63 	<ul style="list-style-type: none"> Pay \$83.00 for 6 consecutive months SAVE \$123.81
OR	OR
<ul style="list-style-type: none"> 12 Monthly Payments of \$51.81 	<ul style="list-style-type: none"> Pay \$44.00 for 12 consecutive months SAVE \$93.81
<p>*Your account will be considered "Paid in Full" once your account reaches a zero balance.</p>	<p>*Your account will be considered "Settled in Full" after your final payment is posted. You owe nothing more.</p>

*****Your first payment must be received NO LATER than 05/15/2015.*****
Call now to get started or to learn about other payment options!

<p>We are ready to help you resolve this debt! Just call: 1-800-772-1413 before 05/15/2015 to discuss the AFFORDABLE PAYMENT OPTIONS that are available to you. 8 AM to 11 PM Mon.-Fri. 8 AM to 5 PM Sat. • 2 PM to 9 PM Sun.</p>	<p>Mall all checks and payments to: PORTFOLIO RECOVERY ASSOCIATES, LLC P.O. Box 12914 Norfolk VA 23541</p>
	<p>Pay Online Using Your Checking Account! www.portfoliorecovery.com</p>

***We are not obligated to renew this offer.**

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The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, Portfolio Recovery Associates, LLC may continue to report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.

70. The Collection Letter fails, however, to advise the Plaintiff that if the Plaintiff accepts either the “Pay the Full Balance” plan or the “Settlement Payment Plan”, both of which provided for a series of partial payments, the Plaintiff by making even a single partial payment revives the Defendant’s ability (statute of limitations) to sue the Plaintiff to collect the full balance of the debt. As such, the Collection Letter if accepted by the Plaintiff would in fact render the Plaintiff worse off than if it was rejected.

71. The Collection Letter is misleading, confusing, deceptive and unfair as it misrepresents the nature, character and/or legal status of the alleged debt. The last line of the Collection Letter, wherein Defendant represents to the Plaintiff that due to the age of the alleged

1 debt the Defendant would not sue the Plaintiff on the alleged debt, leads the Plaintiff to believe
2 that the Plaintiff could accept either the “Pay the Full Balance” plan” or the “Settlement Payment
3 Plan” and make the partial payments there under risk free of any future litigation if the Plaintiff
4 was unable to continue making the future partial payments. Of course, this is not the case. If
5 Plaintiff made even one partial payment for a single dollar, the statute of limitations on the
6 alleged debt would be revived and the Defendant would have another four (4) years from the
7 date of the partial payment (the applicable statute of limitations under California law) to sue
8 Plaintiff for the entire amount of the alleged debt.
9

10 72. It is the position of the Federal Trade Commission, the Consumer Financial
11 Protection Bureau, the Federal Deposit Insurance Corporation, the Federal Reserve Board and
12 the Office of the Comptroller of the Currency that when “collecting on a time barred debt a debt
13 collector [Defendant] must inform the consumer [Plaintiff] that (1) the collector cannot sue to
14 collect the debt *and (2) providing a partial payment would revive the collector’s [Defendant’s]*
15 *ability to sue to collect the balance.*” *McMahon v. LVNV Funding, LLC*, 774 F.3d 1010, 1015
16 (7th Cir. 2014) (emphasis added).
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19 73. The Defendant offers to Plaintiff in the Collection Letter a “Settlement Payment
20 Plan.” The use of the word “settlement” is misleading, confusing, deceptive and unfair in that it
21 leads the Plaintiff to believe that the debt was a legally enforceable obligation and that if the
22 Plaintiff did not accept the “settlement”, the Plaintiff would face a legal proceeding where the
23 full amount of the debt would be demanded.
24

25 74. By virtue of Defendant’s Collection Letter, Defendant falsely represented the
26 nature and/or status of the Alleged Debt.
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1 75. Defendant's actions violate the FDCPA, 15 U.S.C. § 1692e(2)(A), which
2 prohibits "[t]he false representation of (A) the character, amount or legal status of any debt."

3 76. By virtue of Defendant's Collection Letter, Defendant engaged in deceptive
4 means to attempt to collect the alleged Debt from the Plaintiff.

5 77. Defendant's actions violate the FDCPA, 15 U.S.C. § 1692e(10), which prohibits
6 "[t]he use of any false representation or deceptive means to collect or attempt to collect any debt
7 or to obtain information concerning a consumer."

8 78. By virtue of Defendant's Collection Letter, Defendant engaged in unfair and
9 deceptive conduct.
10

11 79. Defendant's actions violate the FDCPA, 15 U.S.C. § 1692f, which mandates that
12 "[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect
13 any debt."
14

15 80. The Rosenthal Act, California Civil Code § 1788.17, requires every debt collector
16 (Defendant) attempting to collect a consumer debt to comply with the provisions of "Sections
17 1692b to 1692j, inclusive, of , and shall be subject to the remedies in Section 1692k of, Title 15
18 of the United States Code."
19

20 81. The Defendant's Collection Letter violates the FDCPA, 15 U.S.C. § 1692e(A)(2),
21 15 U.S.C. § 1692e(10) and 15 U.S.C. § 1692f, and, thereby also constitutes a violation of the
22 Rosenthal Act, California Civil Code §§ 1788.17, 1788.32.
23

24 82. Defendant's actions were knowing and willful.

25 83. As a result of Defendant's wrongful collection practices, Plaintiff has been
26 damaged and is entitled to relief.
27
28

JURY TRIAL DEMAND

Plaintiff demands a trial by jury on all issues so triable.

RELIEF

WHEREFORE, Plaintiff, Eugenio Gorospe, on behalf of himself and all others similarly situated, respectfully requests that this Court enter judgment against the Defendant for the following:

- A. Certifying the Class as described above pursuant to Fed. R. Civ. P. 23(b)(3);
- B. Declaring the Defendant's actions as described above to be in violation of the FDCPA;
- C. Declaring the Defendant's actions as described above to be in violation of the Rosenthal Act;
- D. An award of actual damages for the Plaintiff and all Class Members pursuant to 15 U.S.C. § 1692k(a)(1);
- E. An award of statutory damages for the Plaintiff and all Class Members pursuant to 15 U.S.C. § 1692k(a)(2)(A) and (B);
- F. An award of costs and reasonable attorneys' fees pursuant to 15 U.S.C. § 1692k(a)(3);
- G. An award of actual damages for the Plaintiff and all Class Members pursuant to California Civil Code § 1788.30(a);
- H. An award of statutory damages for the Plaintiff and all Class Members pursuant to California Civil Code § 1788.30(b);

1 I. An award of costs and reasonable attorneys' fees pursuant to California Civil
2 Code § 1788.30(c);

3 J. Enjoining Defendant from further misrepresenting and misleading the effect of a
4 consumer's acceptance of a "settlement payment plan" and/or partial payment on a time
5 barred debt; and.

6 K. Such other and further relief as the Court may deem just and equitable.
7

8
9 Respectfully submitted this 14th Day of April, 2016
10

11 Respectfully Submitted,

12 s/ Rory Leisinger
13 Attorney for Plaintiff
14 Rory Leisinger
15 Rory Leisinger, Esq.
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18 Covina, CA 91723
19 (P) (626) 290-2868
20 (e) rory@leisingerlaw.com

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on April 14, 2016, the foregoing was filed electronically with
23 the Clerk of Court via ECF and will be served upon Defendant via personal service at the
24 following address:

25 Portfolio Recovery Associates, LLC
26 120 Corporate Blvd.
27 Norfolk, VA 23502

28 s/ Rory Leisinger
Rory Leisinger